

### **REMARKS**

Applicants respectfully request further examination and reconsideration in view of the above amendments and the arguments set forth fully below. In the Final Office Action mailed November 15, 2007, claims 1-42 have been rejected. In response, the Applicants have submitted the following remarks, and amended claims 1, 11, 25 and 40. Accordingly, claims 1-42 are still pending. Favorable reconsideration is respectfully requested in view of the amended claims and the remarks below.

#### **Double Patenting**

Claims 1, 3, 9, 11, 16, 20-21, 25-27, 31-32, 34, 39 and 40-41 are provisionally rejected on the ground of non-statutory obviousness/type double patenting as being unpatentable over specific claims of co-pending Application No. 10/750,493 (hereinafter '493 application). It is stated within the Office Action that although the conflicting claims are not identical, they are not patentably distinct from each other.

In response, the Applicants have submitted the attached timely filed terminal disclaimer in compliance with 37 C.F.R. §1.321(c) to overcome the provisional rejection as the conflicting application is commonly owned with the present application. This Terminal Disclaimer was first filed in response to the previous Office Action, but the present Office Action still includes this rejection without explanation. The undersigned contacted the Examiner by telephone on February 7, 2008, but received no explanation. Therefore, the Applicants respectfully request that the provisional double patenting rejection with respect to claims 1, 3, 9, 11, 16, 20-21, 25-27, 31-32, 34, 39 and 40-41 be withdrawn.

#### **Rejections Under 35 U.S.C. §103**

Claims 1-42 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,6264,614 to Albert et al. (hereinafter Albert), in view of Albert et

al.'s background information (hereinafter ABI), and further in view of U.S. Patent No. 5,997,476 to Brown (hereinafter Brown).

The Applicants respectfully point out that the Examiner relies upon the Albert reference to teach the medical monitoring system generating notification message indicating that a patient being monitored may have a condition that requires attention (abstract: heart monitor), a processing circuit configured to receive the notification message indicating that the patient being monitored may have a condition that requires attention (Figure 7: 42; Figure 3: 18; abstract), but fails to disclose wirelessly transferring the notification messages to the portable electronic device. The Applicants respectfully submit that neither Albert, ABI, nor Brown teach the configuration as depicted in Figure 1 of the present application, and now clearly laid out in the newly amended independent claims. Specifically, referring to Figure 1, a plurality of patient monitoring devices 14, 16, 18 are configured to send an alert to the medical monitoring system through a hospital network 44 when any of a plurality of patients being monitored may have a condition that requires attention, and the medical monitoring system configured to generate a notification message when the plurality of patient monitoring devices sends the alert, wirelessly transfers the notification messages to a portable electronic device 58, 60, 62. As stated previously, the portable electronic device includes the audio signal input and output devices, a wireless transceiver and a processing circuit. Furthermore, the portable electronic device is adapted to communicate via plurality of wireless protocols, with reference to Figure 1, a cellular protocol 42, the protocol according to the hospital network 44, through a docking station 48 or the notification transmitter 40, or through an access point 33 of a WLAN 38. It is this configuration that is not taught by neither Albert, ABI, Brown, nor their combination.

The Albert reference discloses a system for generating and transferring medical data, wherein the computer site includes a data generating source, the generating source including a device which may be manipulated by a patient to sense a biological function or condition such as a heartbeat.

The device outputs an audible signal in response to the monitored condition, and the electronic signal generated in response to the audible signal is received through a microphone connected to a computer. The computer sends the resulting data signals over a network, and any number of patients that acts as the computer communications network can provide real time information about their personal medical condition to their personal medical care providers (Albert, abstract). In short, the Albert reference merely teaches the ability for a patient to utilize a microphone to receive an audible signal provided by a sensor, and with the microphone, converting the audible signal to an analog electrical signal, for distribution through the disclosed computer system. A perfect example of this system and method is shown in Figures 7 and 8 of Albert, respectively.

Referring to Figure 7, the sensor 8 in this case includes ECG electrodes 30 an amplifier 32 and a voltage to frequency converter 34, as well as a speaker 36 for generating an audible signal for the microphone 14 the microphone relays the audible signal to the personal computer 16 where an analog to digital converter 40 converts the signal so that the microprocessor circuit 42 may provide it for the user interface embodied by the mouse 44, keyboard 46, and the display 48 or distributed over the internet connection 50. Referring to Figure 8, the sensor provides an acoustical signal in step 8, and the microphone converts the acoustical signal to the analog electrical signal in step 14. The personal computer with the analog to digital converter system operating software web browser and memory download control and record/display receives the signal in step 16 and is configured to transmit it over the internet in 6b.

The Albert reference does not teach a system and method configured to receive a notification message indicating that a patient being monitored may have a condition that requires attention and wirelessly transferring the notification message to the portable electronic device, which in turn is configured to transmit this notification message as well as an audio signal to a second portable device. In short, the Albert reference does not teach a portable device to receive notification messages from a medical monitoring system, and in turn facilitate transfer of voice data to the audio signal output of the same

portable electronic device and from the audio signal input by way of a wireless transceiver. Rather, the Albert reference teaches a microphone configured to receive an acoustical signal from a sensor and convert the acoustical signal to an analog electrical signal for distribution over a network.

ABI teaches a system that converts an ECG signal of a patient into a frequency modulated audio signal. The audio is then inputted into a telephone system to a handheld computing device. Computing the device then utilizes a various number of functions to process the signal to for presentation and viewing, and then the signal may be utilized as the users see fit. ABI does not teach a plurality of monitoring devices sending a alert to a hospital network, and the hospital network distributing the signal to the portable device. The ABI reference again utilizes a microphone to record the signal and input it into the portable device.

The Brown reference teaches a network system for interactive communication and remote monitoring of individuals, wherein a script program is received and executed by the apparatus to communicate queries to an individual to receive responses to the queries, and to transmit the responses from the apparatus to the server. While the Brown reference does indeed teach voice data transmission, the Brown reference also does not teach the functionality of the processing circuit as described and claimed in the present invention.

As discussed above, in contrast to the teachings of Albert, ABI, Brown and their combination, the system and method of the present application includes a portable device that is configured to receive notification messages from a patient monitoring system, and communication not only that notification message, but also an accompanying voice message from the user of the first portable device to a second portable device or other system. The system and method of the present application facilitates a voice communication between the first portable device and the second portable device, and the portable device and system may further be configured to forward other data from the first

portable device to the second portable device such as data associated with the notification message being displayed on one of the devices (present invention, abstract).

The independent claim 1 is directed to a medical monitoring system of a health care facility, the system comprising: a plurality of patient monitoring devices, the plurality of patient monitoring devices configured to send an alert to the medical monitoring system through a hospital network when any of a plurality of patients being monitored may have a condition that requires attention, the medical monitoring system configured to generate a notification message when the plurality of patient monitoring devices sends the alert and wirelessly transfers the notification message to a portable electronic device, wherein the portable electronic device includes: an audio signal input device, an audio signal output device, a wireless transceiver, and a processing circuit configured to receive the notification messages indicating that the patient being monitored may have a condition that requires attention and to facilitate transfer of voice data to the audio signal output and from the audio signal input by way of the wireless transceiver, wherein the portable electronic device is adapted to communicate via a plurality of wireless protocols. As discussed above, neither Albert, ABI, Brown, nor their combination teach the system and method of the present application. For at least these reasons, the independent claim 1 is allowable over the teachings of Albert, ABI, Brown and their combination.

The Applicants respectfully submit that the independent claims 11, 25 and 40 are also allowable over the teachings of Albert, ABI and Brown for the same reasons as discussed above with respect to the independent claim 1.

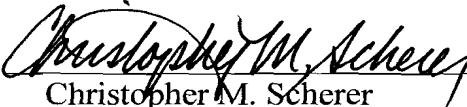
Claims 2-10, 12-24, 26-29 and 41-42 are dependent upon the independent claims 1, 11, 25 and 40. As discussed above, the independent claims 1, 11, 25 and 40 are allowable over the teachings of Albert, ABI, Brown and their combination. Accordingly, claims 2-10, 12-24, 26-39, and 41-42 are also allowable as being dependant upon an allowable base claim.

*Application No. 10/750,608*  
*Amendment Dated February 15, 2008*  
*Reply to Office Action of November 15, 2007*

For these reasons, Applicants respectfully submit that all of the claims are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at 414-271-7590 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,

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